

PERSONNEL

MERIT SYSTEM BOARD

Selection and Appointment

Proposed Readoption With Amendments: N.J.A.C. 4A:4

Authorized by: The Merit System Board, Ida L. Castro, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 38:23A-2, 40A:9-1.3 through 1.10, 40A:14-9.9, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1 and 40A:14-180; P.L.1992, c. 197; and Executive Order No. 10 (1982).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-

A public hearing concerning the proposed readoption with amendments will be held on:

Wednesday, June 18, 2003 at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal of the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by August 1, 2003 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Unit A

Department of Personnel

P.O. Box 312

Trenton, NJ 08625-0312

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 4A:4 expires on November 8, 2003. The Merit System Board has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by law. Since

N.J.A.C. 4A:4 was last readopted in 1998, various amendments have been adopted, as required by legislative enactment, in accordance with recommendations by advisory boards with whom the Commissioner of Personnel consults, and pursuant to Departmental review of the rules.

Subchapter 1 concerns types of appointments that may be made. No amendments are proposed to N.J.A.C. 4A:4-1.1, Career service appointments; 4A:4-1.2, Senior executive service appointments: State service; 4A:4-1.3, Unclassified appointments; 4A:4-1.4, Conditional regular appointments; 4A:4-1.5, Provisional appointments; 4A:4-1.6, Interim appointments; 4A:4-1.7, Temporary appointments; 4A:4-1.8, Emergency appointments; 4A:4-1.9, Return of employees to their permanent titles; and 4A:4-1.10, Approval of appointments by Department of Personnel.

It is noted that N.J.A.C. 4A:4-1.10(a) provides that all appointments, promotions and related personnel actions are subject to Department of Personnel review and approval, whether these personnel actions are in the career, unclassified or senior executive service. This subsection clarifies that the Department's appointment approval authority is a key part of the comprehensive regulatory scheme vested in the Commissioner of Personnel to establish and maintain a civil service classification plan and, in State service, a Statewide compensation plan. See N.J.S.A. 11A:3-1 and 11A:3-7; N.J.A.C. 4A:3-3.2, 3.3 and 4.1.

Moreover, N.J.A.C. 4A:4-1.10(c) provides that the Commissioner may order a retroactive appointment date due to administrative error, administrative delay or other good cause, upon notice to affected parties. This provision ensures the availability of a remedy in cases where, through no fault of an employee, his or her appointment date was erroneously recorded by the appointing authority or by the Department. Such a remedy may be effected whether or not the eligible list from

which the employee was appointed is active or has expired.

Subchapter 2 covers competitive examinations. No changes are proposed to N.J.A.C. 4A:4-2.1, Announcements and applications; 4A:4-2.2, Types of examinations; 4A:4-2.3, Open competitive examinations; 4A:4-2.5, Promotional title scope: State service; 4A:4-2.6, Eligibility for promotional examination; 4A:4-2.7, Promotion upon waiver of competitive examination; 4A:4-2.8, Scheduling of examinations; 4A:4-2.9, Make-up examinations; 4A:4-2.10, Conduct and security of examinations; 4A:4-2.11, Residence standards; 4A:4-2.12, Professional qualifications substitution program; 4A:4-2.13, College Level Examination Program (CLEP); 4A:4-2.14, Accommodation and waiver of examinations for persons with disabilities; 4A:4-2.15, Rating of examinations; 4A:4-2.16, Retention and inspection of examination records; and 4A:4-2.17, Application processing fees.

Presently, N.J.A.C. 4A:4-2.4, Promotional title scope: local service, provides that, when a title that is the subject of a promotional examination is part of a title series, the test shall be open to the next lower or next two lower in-series titles, or to all applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles.

The longstanding interpretation of the rule is that “next lower or next two lower in-series titles” refers to the Department of Personnel’s established title series, regardless of jurisdictional use. Thus, a Police Chief test is opened up to Deputy Police Chief, or Deputy Police Chief and Police Captain, regardless of whether the town uses those titles. Similarly, a Fire Chief test is opened up to Deputy Fire Chief, or Deputy Fire Chief and Battalion Fire Chief, regardless of whether the town uses those titles.

Over the years, the Department of Personnel has received numerous requests to relax the rule

to open the promotional title scope in police and fire promotions to lower titles than provided for in N.J.A.C. 4A:4-2.4. The need for these rule relaxations echoes the court decision, In the Matter of Police Chief (M2010), South Orange Village, 266 N.J.Super. 101 (App.Div. 1993). In that decision, the court questioned the Department's interpretation of promotional title scopes, as described above.

Therefore, the Merit System Board proposes amendments to N.J.A.C. 4A:4-2.4 to forestall the need for future rule relaxations, to make clear that the Department's previous interpretation of the rule is being changed, and to address the concerns raised in the Police Chief, South Orange Village court decision. The proposed amendments would require that a local promotional examination be open to either the next lower in-series title used in the local jurisdiction, the next two lower in-series titles used in the jurisdiction, or all applicants in the unit scope who meet the open competitive requirements as well as all applicants in the next lower or next two lower in-series titles used in the jurisdiction.

Similar amendments are proposed regarding title scopes for promotion from the noncompetitive division of the career service to a related entry-level title in the competitive division of the career service. Here, the title scope would be comprised of all applicants meeting the open competitive requirements and who are either serving in the next lower in-series noncompetitive title used in the jurisdiction, the next two lower in-series noncompetitive titles used in the jurisdiction, all related noncompetitive titles, or any competitive title.

Language in N.J.A.C. 4A:4-2.4(b) would be modified and become a new (d), and other

subsections would be renumbered accordingly. The new subsection (d) would indicate that the title scopes heretofore described in (a)2, (a)3 and (c)2 through 4 may be used in any combination when a wider title scope is appropriate, or in a situation where the appointing authority promotes an employee on a provisional basis when that employee is not permanent in the next lower in-series title, or next two lower in-series titles, as established by the Department of Personnel. Finally, a new subsection (f) would be added, providing that the local jurisdiction may be required to provide the Department of Personnel with appropriate evidence of its use of titles.

No changes are proposed to subchapter 3, which concerns eligible lists and includes the following rules: 4A:4-3.1, Types of eligible lists; 4A:4-3.2, Order of names on eligible lists; 4A:4-3.3, Duration and cancellation of eligible lists; 4A:4-3.4, Revival of eligible lists; 4A:4-3.5, Consolidation of eligible lists; 4A:4-3.6, Additions to eligible lists; 4A:4-3.7, Priority of eligible lists; 4A:4-3.8, Correction of errors; 4A:4-3.9, Reemployment program for certain law enforcement officers and firefighters; and 4A:4-3.10, Procedures for reemployment program for certain law enforcement officers and firefighters.

Subchapter 4 governs certifications from eligible lists. Proposed for readoption without amendment are N.J.A.C. 4A:4-4.1, Need for certification; 4A:4-4.2, Issuance of certification, 4A:4-4.3, Certification from appropriate lists; 4A:4-4.4, Limitation on number of times eligible is certified; 4A:4-4.5, Certifications limited to persons of a particular sex, religion or national origin; 4A:4-4.6, Eligibles on military leave; 4A:4-4.7, Removal of names; 4A:4-4.8, Disposition of a certification; 4A:4-4.9, Date of appointment; and 4A:4-4.10, Certification of additional eligibles.

The Board does not propose amendments to subchapters 5, 6 or 7. Subchapter 5 concerns

working test periods and includes the following rule sections: N.J.A.C. 4A:4-5.1, General provisions; 4A:4-5.2, Duration; 4A:4-5.3, Progress reports; 4A:4-5.4, Working test period appeals; and 4A:4-5.5, Restoration to eligible list or former title. Subchapter 6 concerns examination and selection disqualification and appeals and includes the following rule sections: N.J.A.C. 4A:4-6.1, Examination and selection disqualification; 4A:4-6.2, Actions against disqualified persons; 4A:4-6.3, Examination and selection appeals; 4A:4-6.4, Review of examination items, scoring and administration; 4A:4-6.5, Medical and/or psychological disqualification appeals; and 4A:4-6.6, Disqualification appeals.

Subchapter 7, regarding appointments and employee movements not covered in the other subchapters, includes the following rule sections: N.J.A.C. 4A:4-7.1, Transfers within the same governmental jurisdiction; 4A:4-7.1A, Intergovernmental transfers; 4A:4-7.2, Reassignments; 4A:4-7.3, Relocation assistance: State service; 4A:4-7.4, Retention of rights; 4A:4-7.5, Transfer during a working test period; 4A:4-7.6, Lateral title change; 4A:4-7.7, Appeals; 4A:4-7.8, Voluntary demotion; 4A:4-7.9, Resignation/new appointment; 4A:4-7.10, Regular reemployment; 4A:4-7.11, Transfer or combining of functions; and 4A:4-7.12, Reinstatement following disability retirement.

As the Merit System Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules in N.J.A.C. 4A:4 proposed for readoption without change would continue to

provide a clear, regulatory framework for vital activities of the Department of Personnel concerning selection and appointment. These rules have a substantial impact upon hundreds of thousands of merit system employees and candidates for employment, as well as several hundred State and local appointing authorities. In the absence of readoption of this chapter, these individuals and government agencies would have no guidance on matters involving selection and appointment of personnel, other than the provisions of Title 11A, New Jersey Statutes.

In particular, the readoption of N.J.A.C. 4A:4-1.10(a) would apprise both appointing authorities and employees of the authority vested in the Department of Personnel by the Civil Service Act to review the propriety of appointments rather than just to approve them without review. The readoption of N.J.A.C. 4A:4-1.10(c) would provide clear, regulatory authority to the Commissioner of Personnel to remedy situations involving appointment date errors and, at the same time, inform appointing authorities and employees of the availability of such a remedy, where necessary. In addition, if an employee's appointment date is recorded incorrectly for any reason, the employee would be assured that a mechanism exists to correct any problems that arise from that error, such as insufficient seniority for layoff purposes.

Also, the readoption of N.J.A.C. 4A:4-2.3(b)2, regarding methods of age reduction for purposes of meeting the maximum hiring age of 35 for municipal police officers, would ensure that individuals over the age of 35 with prior law enforcement experience receive appropriate consideration. Readoption of this rule paragraph would assist Department of Personnel staff, appointing authorities and members of the public in becoming familiar with the concept of age reduction in the context of municipal police officer eligibility.

Additionally, the readoption of N.J.A.C. 4A:4-4.7(b) would benefit eligibles whose names are being removed from an eligible list by request of the appointing authority. Provisions would require an appointing authority to provide copies of all relevant list removal materials to the eligible either at his or her request or upon the eligible's appeal. Any eligible would benefit from being aware of the specific grounds for the removal request, so that he or she may either frame the arguments in an appeal or simply be aware of possible problems with his or her credentials for future employment opportunities.

The Board anticipates a positive social impact to result from adoption of the proposed amendments to N.J.A.C. 4A:4-2.4 regarding promotional title scopes in local service. A recognition of the organizational structure in a local jurisdiction in the setting of title scopes, while still adhering to the use of title series established by the Department of Personnel, would concurrently further merit and fitness and engender the flexibility necessary for the Department of Personnel to provide good customer service. Qualified employees would still be eligible for promotion in local service, benefiting the employees and the appointing authority.

Economic Impact

The proposed readoption of N.J.A.C. 4A:4 with amendments would have at least a partial economic impact upon employees, appointing authorities and the public at large.

The readoption of N.J.A.C. 4A:4-1.10(c) would help to ensure that employees' seniority is properly credited, for purposes of layoff, promotions, vacation leave accrual and other matters, the first two of which have a particular impact on the economic well-being of employees.

The readoption of N.J.A.C. 4A:4-2.3(b) would have a positive economic impact on some municipal police officer applicants who are over the age of 35 but who may qualify for these positions if they can reduce their age with time served in certain other law enforcement titles.

The readoption of N.J.A.C. 4A:4-2.11, regarding local appointing authority submissions to the Department of Personnel of current residency ordinances or resolutions, would encourage efficient announcement and administration of examinations. Reliance on an outdated residency ordinance or resolution by the Department in announcing an examination may render a resulting eligible list unusable and necessitate a second announcement. To the extent that such situations occur, the Department needs a mechanism for recouping losses incurred in having to reannounce, and possibly readminister, an examination. The readoption of this rule could have a negative economic impact on an appointing authority that fails to submit a residency ordinance or resolution in a timely manner, in light of the penalty that could be imposed relating to Department of Personnel costs in reannouncing and readministering a test.

Furthermore, the Board anticipates a positive economic impact to result from adoption of the proposed amendments to N.J.A.C. 4A:4-2.4. A recognition of the organizational structure in a local jurisdiction when issuing a promotional examination announcement should reduce the number of disputes and appeals. Additionally, local appointing authorities should benefit fiscally from this change to the rule, as filling promotional vacancies would be done with greater certainty and efficiency.

Federal Standards Statement

A Federal standards analysis is not required because N.J.A.C. 4A:4 is not subject to any Federal requirements or standards.

Jobs Impact

It is not anticipated that any jobs would be generated or lost if the rules at N.J.A.C. 4A:4 proposed for readoption with amendments were adopted. The rules proposed for readoption with amendments govern aspects of an existing program for selection and appointment in the civil service system.

Agriculture Industry Impact

It is not anticipated that the rules at N.J.A.C. 4A:4 proposed for readoption with amendments would have any agriculture industry impact. The rules involve public sector employment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules at N.J.A.C. 4A:4 proposed for readoption with amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the rules at N.J.A.C. 4A:4 proposed for readoption with amendments would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:4.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:

i. A different residency requirement is specified by law or provided by the Commissioner; or

ii. It appears that there is an inadequate number of qualified residents available for the title.

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority (SEPTA) police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in N.J.S.A. 40A:14-127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. For good cause, the Commissioner may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, [including, but not limited to, entry-level law enforcement examinations,] the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility for particular announcements and/or title areas [shall] may depend upon the applicant's residency as indicated on the application.

(d) When a promotional examination is announced, an open competitive examination may also be announced.

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Department of Personnel.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. Credit shall be awarded as follows:

- i. Three points for Exceptional; or
- ii. One point for Commendable.

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Commendable and credit shall be given for that rating.

3. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations, voluntary furloughs and the following types of leaves shall not be deducted from seniority.

- 1. All leaves with pay including sick leave injury (SLI);
- 2. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and
- 3. In local service, leave without pay to fill elective office.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 90 percent to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

(h) [A candidate may take the Law Enforcement Candidate Record (LECR) examination no more than once in a two-year period.] The score earned by [the] a candidate on [the LECR] an

examination announced for more than one title area at a time shall be used for all [entry-level law enforcement] examinations in those title areas for which the candidate files [during that time period. See N.J.A.C. 4A:4-2.17(a)1 on fees for use of score after one year] and is found eligible.

(i) A candidate for an examination may be permitted to use an examination score for a period, or for more than one title or more than one test, as determined by the Commissioner.

(i) Ties in final earned ratings shall not be broken.

4A:4-2.17 Application processing fees

(a) A [\$5.00] \$15.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. The Commissioner shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring and administering the examination, including the processing of any appeals or reviews associated with the examination. Receipts derived from this application fee shall be appropriated to the Department for use in developing, procuring and administering law enforcement officer and firefighter examinations, including the processing of any appeals or reviews associated with those examinations.

[i.] 2. When announcements for [the entry-level law enforcement] an examination list more than one title area (such as police, sheriff, corrections and bilingual), [the] a processing fee shall be charged for each title area selected by the applicant. [If a candidate is not appointed to a position within one year of establishment of the pool of eligibles, the candidate may remain in the pool of eligibles for an additional year by payment of the processing fee for each title area selected by the eligible.]

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance--a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.
2. Work First New Jersey Act--a copy of the applicant's Families First card.
3. Supplemental Security Income--a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").

2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

4A:4-4.2 Issuance of certification

(a) Upon determining that there is a need for a certification as provided in N.J.A.C. 4A:4-4.1, the Department of Personnel shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list.

1. When the Department of Personnel has accepted a single application for one or more title areas, pursuant to N.J.A.C. 4A:4-2.3(c), the certification shall be drawn from the pool of eligibles based on their title area and county preference and their residency.

(b) When a certification is issued, the Department shall notify or authorize the notification of the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police and fire reemployment lists, the name of one interested eligible for each permanent appointment; or

2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each

additional permanent appointment. Eligibles who receive the same score shall have the same rank. If three or more eligibles can be certified as a result of this ranking without resorting to all three highest scores on the list, then only those eligibles will be certified.

i. When fewer than three interested eligibles are certified and no provisional currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

ii. When fewer than three interested eligibles are certified and a provisional who is currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; or vacate the position/title.

iii. When a certification is comprised of multiple lists and an eligible's name appears more than once, the eligible will only be counted once for purposes of making a complete certification.

(d) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;

2. Permanent appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;

3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. The Department of Personnel must be notified when the eligible wishes to be considered for certification;

4. The eligible has a criminal record which adversely relates to the employment sought.

i. The following factors may be considered in determining whether a criminal record adversely relates to employment:

(1) The nature and seriousness of the crime;

(2) The circumstances under which the crime occurred;

(3) The date of the crime and age of the eligible when the crime was committed;

(4) Whether the crime was an isolated event; and

(5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer or firefighter titles and other titles as the Commissioner may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to the Department of Personnel, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the Commissioner.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to the Department, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the Department.

2. If the appointing authority fails to provide either the Department or the eligible with copies of materials, the request for removal may be denied.

(c) The Department of Personnel shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Department may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

(g) When the Department of Personnel has accepted a single application for one or more [law enforcement] title areas, pursuant to N.J.A.C. 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

(h) When an eligible has been permanently appointed from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or
3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:
 - i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;
 - ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and
 - iii. See N.J.A.C. 4A:4-2.15(i) for tie scores.

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. A statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tied score;
5. In situations where an appropriate list is used, the title and functions of the appointee's employment; and
6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Department may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8-1.1 et seq. for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.